

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Charis Jones	Team: Squad #3	CCRB Case #: 201910975	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday 12/26/2019 1:15 PM	18 Mo. SOL 06-26-2021	EO SOL 02-10-2022	Location of Incident: [REDACTED]		Precinct: 101
Date/Time CV Reported Fri, 12/27/2019 9:10 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 12/27/2019 9:10 AM		

Complainant/Victim	Type	Home Address
1. [REDACTED]	Comp/Victim	[REDACTED] Far Rockaway NY [REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM [REDACTED]	[REDACTED]	[REDACTED]	101 PCT
2. SGT [REDACTED]	[REDACTED]	[REDACTED]	101 PCT
3. POM Lukasz Solis	14287	943832	101 PCT
4. POM [REDACTED]	[REDACTED]	[REDACTED]	101 PCT
5. POM [REDACTED]	[REDACTED]	[REDACTED]	101 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM [REDACTED]	Force: Police Officer [REDACTED] used physical force against [REDACTED]	A . Substantiated
B . POM Roberto Napoli	Force: Police Officer Roberto Napoli used physical force against [REDACTED]	B . Substantiated
C . POM [REDACTED]	Force: Police Officer [REDACTED] used physical force against [REDACTED]	C . Exonerated
D . POM [REDACTED]	Abuse of Authority: Police Officer [REDACTED] frisked [REDACTED]	D . Exonerated
E . POM [REDACTED]	Abuse of Authority: Police Officer [REDACTED] searched [REDACTED]	E . Exonerated
F . POM Roberto Napoli	Abuse of Authority: Police Officer Roberto Napoli searched the vehicle in which [REDACTED] was an occupant.	F . Exonerated
G . SGT [REDACTED]	Abuse of Authority: Sergeant [REDACTED] searched the vehicle in which [REDACTED] was an occupant.	G . Exonerated
H . SGT [REDACTED]	Abuse of Authority: Sergeant [REDACTED] searched the vehicle in which [REDACTED] was an occupant.	H . Substantiated
I . POM Lukasz Solis	Abuse of Authority: Police Officer Lukasz Solis searched the vehicle in which [REDACTED] was an occupant.	I . Substantiated
J . POM [REDACTED]	Other Possible Misconduct Noted: Police Officer [REDACTED] failed to prepare a Threat, Resistance, Injury Report.	J . Other Possible Misconduct
K . POM [REDACTED]	Other Possible Misconduct Noted: Police Officer [REDACTED] failed to prepare a Threat, Resistance, Injury Report.	K . Other Possible Misconduct
L . POM Roberto Napoli	Other Possible Misconduct Noted: Police Officer Roberto Napoli failed to prepare a Threat, Resistance, Injury Report.	L . Other Possible Misconduct
M . SGT [REDACTED]	Other Possible Misconduct Noted: Sergeant [REDACTED] failed to prepare a Threat, Resistance, Injury Report.	M . Other Possible Misconduct

Case Summary

On December 27, 2019, [REDACTED] filed this complaint with the CCRB over the phone. This case was originally assigned to Investigator Zev Carter and was reassigned to the undersigned investigator on October 8, 2021.

On December 26, 2019, at approximately 1:15 p.m., Mr. [REDACTED] was driving his car when Sergeant [REDACTED] Police Officer [REDACTED] and Police Officer Roberto Napoli of the 101st Precinct stopped him in the vicinity of Brookhaven Avenue and Caffrey Avenue in Queens for failing to signal and driving with an obstructed view. Police Officer [REDACTED] and Police Officer Lukasz Solis, also assigned to the 101st Precinct, responded to the location as well. PO [REDACTED] PO Napoli, and PO [REDACTED] pulled Mr. [REDACTED] out of his vehicle (**Allegations A and B, Force, Substantiated; Allegation C: Force, Exonerated**). PO [REDACTED] frisked and searched Mr. [REDACTED] (**Allegations D and E: Abuse of Authority, Exonerated**). PO Napoli and Sgt. [REDACTED] searched the driver's side of Mr. [REDACTED] vehicle (**Allegation F and G: Abuse of Authority, Exonerated**). Sgt. [REDACTED] and PO Solis searched the entirety of Mr. [REDACTED] vehicle (**Allegations H and I: Abuse of Authority, Substantiated**). Mr. [REDACTED] was subsequently taken to the 101st Precinct stationhouse.

PO [REDACTED] PO Napoli, PO [REDACTED] and Sgt. [REDACTED] failed to prepare Threat, Resistance, and Injury (TRI) reports for this incident (**Allegations J-M: Other Possible Misconduct Noted**).

PO [REDACTED] issued Mr. [REDACTED] traffic summons #B193022559 for failure to signal and traffic summons #B193022575 for driving with an obstructed view (Board Review 01, 02). No arrests were made, and no additional summonses were issued as a result of this incident.

Mr. [REDACTED] civil attorney, [REDACTED] of [REDACTED], alleged that Mr. [REDACTED] sustained a fractured rib as a result of hitting the ground after the officers pulled him out of his vehicle (Board Review 03).

PO [REDACTED] has [REDACTED] been promoted to a Detective, Third Grade, and now works in the 101st Precinct Detective Squad.

IAB conducted a concurrent investigation into this incident, which generated log # 20-01578 (Board Review 07).

This case contains body-worn-camera (BWC) footage from PO [REDACTED] PO Solis, Sgt. [REDACTED] PO Napoli, and PO [REDACTED] (Board Review 04). The officers' footage, respectively, captures the incident in its entirety.

Findings and Recommendations

Allegation (A) Force: Police Officer [REDACTED] used physical force against [REDACTED]

Allegation (B) Force: Police Officer Roberto Napoli used physical force against [REDACTED]

Allegation (C) Force: Police Officer [REDACTED] used physical force against [REDACTED]

Allegation (D) Abuse of Authority: Police Officer [REDACTED] frisked [REDACTED]

Allegation (E) Abuse of Authority: Police Officer [REDACTED] searched [REDACTED]

Allegation (F) Abuse of Authority: Police Officer Roberto Napoli searched the vehicle in [REDACTED]

which [REDACTED] was an occupant.

Allegation (G) Abuse of Authority: Sergeant [REDACTED] searched the vehicle in which [REDACTED] was an occupant.

Allegation (H) Abuse of Authority: Sergeant [REDACTED] searched the vehicle in which [REDACTED] was an occupant.

Allegation (I) Abuse of Authority: Police Officer Lukasz Solis searched the vehicle in which [REDACTED] was an occupant.

The following facts are undisputed: In the days leading up to this incident, Sergeant James Geissler of the Intelligence Bureau Criminal Intelligence Section, while working as a Field Intelligence Officer at the 101st Precinct, issued an “officer safety flyer” that noted that Mr. [REDACTED] may have been in possession of a firearm (Board Review 05). The flyer noted Mr. [REDACTED] address, included his photograph, described his vehicle, and that he should be treated as armed and dangerous. On the incident date, Mr. [REDACTED] got into his white [REDACTED] with New York State license plate number [REDACTED] and drove to the [REDACTED] of [REDACTED] and [REDACTED] in Queens. PO [REDACTED] PO Napoli, and Sgt. [REDACTED] who were working anti-crime for the 101st Precinct, stopped Mr. [REDACTED] for a moving violation. PO [REDACTED] and PO Solis, also working anti-crime for the 101st Precinct, responded to the location to back up the officers. PO [REDACTED] PO [REDACTED] and PO Napoli removed Mr. [REDACTED] from the vehicle. PO Napoli, Sgt. [REDACTED] PO [REDACTED] and PO Solis searched the vehicle. They did not find a weapon inside of the vehicle. Mr. [REDACTED] was taken to the 101st Precinct stationhouse and issued two summonses for the traffic violations. Mr. [REDACTED] vehicle was taken to the 101st Precinct stationhouse as well.

Mr. [REDACTED] (Board Review 06) testified that after he was pulled over, PO [REDACTED] approached his driver side window and requested his driver license and registration. Mr. [REDACTED] took his wallet out of his back pocket, put it on his lap, and reached toward his glove compartment to retrieve his insurance documents. PO [REDACTED] asked Mr. [REDACTED] to get out of the vehicle. Mr. [REDACTED] asked why, and PO [REDACTED] ordered him to get out again. Mr. [REDACTED] told PO [REDACTED] that it would take him longer than usual to get out of the car because he had limited use of his left arm and left leg due to a gunshot injury. As Mr. [REDACTED] took off his seatbelt with his right arm, approximately five officers in plain clothes opened the car door, grabbed Mr. [REDACTED] chest and torso area, and pulled him to the ground in one fluid motion. Mr. [REDACTED] landed on the ground face-first and PO [REDACTED] put his left arm behind his back [REDACTED] pain. PO [REDACTED] informed Mr. [REDACTED] that he was removed because he refused to comply with their orders and the officers needed to make sure that he did not have a gun. While Mr. [REDACTED] was on the ground, officers searched his pockets. Mr. [REDACTED] could not tell which officer searched him or which pockets were searched because he felt so many hands on him. Mr. [REDACTED] heard his car door being opened and assumed that the officers were searching his car. Officers brought Mr. [REDACTED] to the 101st Precinct stationhouse, questioned him about his knowledge of local gangs and recent shootings, and issued him two summonses. An officer then walked Mr. [REDACTED] to his vehicle, which was parked across the street from the stationhouse. Mr. [REDACTED] noticed that the interior of his car was messy, as though officers had moved things around. Mr. [REDACTED] wallet was placed on his front seat. Papers formerly inside of Mr. [REDACTED] dashboard were placed outside of it.

Mr. [REDACTED] CCRB testimony was consistent with the information he provided during his 50-h hearing held on June 25, 2020 (Board Review).

Mr. [REDACTED] of [REDACTED] provided the investigation with Mr. [REDACTED] medical records. On December 27, 2019, Mr. [REDACTED] went to the emergency department of Long Island Jewish Medical Center in Queens (Board Review 03). His medical records noted that Mr. [REDACTED] complained of back pain and stated that police assaulted him and held his hand behind his back with

force. His medical records also note that Mr. [REDACTED] had reduced range of motion in his left arm and was shot in the past. X-rays revealed that Mr. [REDACTED] had no fractures, dislocations, or rib pathology and did not have a separated shoulder.

The NYPD Intelligence Bureau's Officer Safety Flyer noted that Mr. [REDACTED] "may be in possession of a firearm," his previous arrests, home addresses, and described his vehicle (Board Review 05). The flyer also notes that Mr. [REDACTED] should be treated as armed and dangerous but is not a wanted fugitive. The flyer did not contain a date.

PO Napoli, Sgt. [REDACTED] PO [REDACTED] PO [REDACTED] and PO Solis testified that they were familiar with Mr. [REDACTED] prior to this incident because of an officer safety flyer they had received. PO Napoli testified that he observed the officer safety flyer regarding Mr. [REDACTED] on the day of the incident (Board Review 10). Sgt. [REDACTED] stated that he received the flyer at some point during the week of the incident (Board Review 11). PO [REDACTED] and PO [REDACTED] did not recall when they first observed the flyer (Board Reviews 09 and 12). PO Solis could not recall if he was made aware of Mr. [REDACTED] by word of mouth or the flyer (Board Review 13).

In his CCRB interview, PO [REDACTED] (Board Review 09) testified that he was in a vehicle with Sgt. [REDACTED] and PO Napoli when he observed Mr. [REDACTED] walk to his car. PO [REDACTED] recognized Mr. [REDACTED] from the flyer he received. PO [REDACTED] did not see any suspicious bulges anywhere on Mr. [REDACTED] body. Mr. [REDACTED] got into his car and drove away from his parking spot without signaling. PO [REDACTED] deployed his vehicle's turret lights and stopped Mr. [REDACTED] PO [REDACTED] approached Mr. [REDACTED] window and asked for his driver license, registration, and proof of insurance. From where he stood, PO [REDACTED] could not see Mr. [REDACTED] legs or feet, and he did not have the time to look for bulges on Mr. [REDACTED] body. PO [REDACTED] asked for Mr. [REDACTED] driver's license two more times before Mr. [REDACTED] provided it. PO [REDACTED] ordered Mr. [REDACTED] to get out of the vehicle. Mr. [REDACTED] did not step out. PO [REDACTED] did not remember whether Mr. [REDACTED] said anything about whether he had limited mobility in his arm. PO [REDACTED] opened Mr. [REDACTED] car door and asked him to get out of the vehicle again. PO [REDACTED] reached into the vehicle to prevent Mr. [REDACTED] from reaching toward anything and to guide Mr. [REDACTED] out of the vehicle. Mr. [REDACTED] still did not move. The information on the flyer, Mr. [REDACTED] initial non-compliance when asked to provide an ID, and his non-compliance when asked to get out of the vehicle all led PO [REDACTED] to believe that Mr. [REDACTED] possessed a firearm. During this time, Mr. [REDACTED] reached down underneath his car seat. PO [REDACTED] did not see what Mr. [REDACTED] was reaching for. PO [REDACTED] attempted to remove Mr. [REDACTED] from the vehicle. Mr. [REDACTED] put his head against the car seat headrest in his vehicle, effectively preventing his head from leaving the vehicle. PO [REDACTED] interpreted this as an intentional act because the positioning of Mr. [REDACTED] head prevented PO [REDACTED] and the other officers from taking him out of the vehicle. PO [REDACTED] held on to Mr. [REDACTED] and guided him out of the vehicle. PO [REDACTED] could not recall where on Mr. [REDACTED] body he grabbed while guiding him out of the vehicle. PO [REDACTED] denied [REDACTED] effort or force to guide Mr. [REDACTED] out of the vehicle and to the ground. He did not throw or push Mr. [REDACTED] to the ground. After Mr. [REDACTED] was handcuffed, PO [REDACTED] searched Mr. [REDACTED] waist to ensure his safety. PO [REDACTED] stood next to Mr. [REDACTED] for the duration of his time on scene PO [REDACTED] did not witness other officers search Mr. [REDACTED] vehicle. Sgt. [REDACTED] decided that Mr. [REDACTED] should be taken to the stationhouse. PO [REDACTED] transported Mr. [REDACTED] to the stationhouse. At the stationhouse, PO [REDACTED] lodged Mr. [REDACTED] in a holding cell and completed the summonses. PO [REDACTED] did not search Mr. [REDACTED] vehicle at the stationhouse nor did he hear of any other officers doing so.

PO [REDACTED] was interviewed by IAB for this incident (Board Review 24, IA # 241 for transcription). PO [REDACTED] CCRB testimony was generally consistent with his IAB testimony,

apart from additional contextual details as well as why he ordered Mr. [REDACTED] to step out of the vehicle. PO [REDACTED] stated that Mr. [REDACTED] stalled in providing his identification and his demeanor was such that it seemed he was trying to buy time. Mr. [REDACTED] began asking questions about why he had been stopped and appeared nervous. Mr. PO [REDACTED] ordered Mr. [REDACTED] to step out of the vehicle because he had been stopped for a traffic infraction, had refused PO [REDACTED] orders several times prior, and the flyer stated that he could be in possession of a firearm. Mr. [REDACTED] did not want to get out of the vehicle, so PO [REDACTED] opened the driver side door. Simultaneously, Mr. [REDACTED] reached his hand beneath the driver's seat. For the safety of himself and his partners, PO [REDACTED] grabbed Mr. [REDACTED] hand and removed him from the vehicle. Once on the ground, PO [REDACTED] searched Mr. [REDACTED] to ensure that he did not have any weapons on his person. After PO [REDACTED] issued Mr. [REDACTED] the summonses at the stationhouse, PO [REDACTED] walked Mr. [REDACTED] to his vehicle and shook his hand.

PO Napoli's (Board Review 10) CCRB testimony was generally consistent with PO [REDACTED] apart from his own interaction with Mr. [REDACTED]. PO Napoli clarified that Mr. [REDACTED] repeatedly asked PO [REDACTED] why he was being stopped before PO [REDACTED] opened the door. After PO [REDACTED] opened Mr. [REDACTED] door, PO Napoli and PO [REDACTED] ordered Mr. [REDACTED] to get out of the vehicle. PO Napoli did not know who decided that Mr. [REDACTED] should get out of the vehicle or why the decision was made. Simultaneously, Mr. [REDACTED] reached underneath the driver's seat, which caused PO Napoli to lose sight of Mr. [REDACTED] hands. PO Napoli grabbed one of Mr. [REDACTED] arms and PO [REDACTED] grabbed the other to remove him from the vehicle. Mr. [REDACTED] pressed his head onto the ceiling of the vehicle and said that he was stuck. PO [REDACTED] and PO Napoli ordered Mr. [REDACTED] to lower his head. Mr. [REDACTED] eventually moved his head and PO [REDACTED] and PO Napoli brought Mr. [REDACTED] to the ground face-first. PO Napoli did not pull Mr. [REDACTED] out of the vehicle. PO Napoli handcuffed Mr. [REDACTED] once he was on the ground. After handcuffing Mr. [REDACTED] PO Napoli entered Mr. [REDACTED] vehicle on the driver's side and searched beneath the driver's seat and the floor area where Mr. [REDACTED] could have reached. PO Napoli was looking for a weapon or anything else that Mr. [REDACTED] could have been reaching for. PO Napoli did not recover any weapons or contraband from Mr. [REDACTED] vehicle. PO Napoli eventually drove himself and Sgt. [REDACTED] to the stationhouse. An officer drove Mr. [REDACTED] vehicle back to the stationhouse. PO Napoli did not search the vehicle at the stationhouse. Other officers did not search the vehicle at the stationhouse. PO Napoli's CCRB testimony was consistent with his IAB testimony regarding his initial interaction with Mr. [REDACTED] and the actions he took while on scene (Board Review 24, IA # 241 for transcription).

Sgt. [REDACTED] (Board Review 11) CCRB testimony was generally consistent with PO [REDACTED] and PO Napoli's statements, except for his own interaction with Mr. [REDACTED] and additional actions he took on scene. Once Mr. [REDACTED] was stopped, Sgt. [REDACTED] approached on the passenger side of Mr. [REDACTED] vehicle. Sgt. [REDACTED] could see Mr. [REDACTED] legs and upper body from where he stood. Sgt. [REDACTED] did not recall seeing any suspicious bulges on Mr. [REDACTED] person. Sgt. [REDACTED] did not see any objects around Mr. [REDACTED] feet. Sgt. [REDACTED] could see Mr. [REDACTED] hands, but he could not remember where Mr. [REDACTED] kept them. PO [REDACTED] asked for Mr. [REDACTED] driver's license and registration numerous times and eventually asked him to get out of the vehicle. Mr. [REDACTED] did not exit his vehicle. Mr. [REDACTED] raised his voice and appeared upset. Sgt. [REDACTED] did not remember what Mr. [REDACTED] said or whether he said anything about his medical conditions. Sgt. [REDACTED] was on the passenger's side of the vehicle when Mr. [REDACTED] made a "furtive movement" with his hand toward the floor of his vehicle. Sgt. [REDACTED] went around the rear of the vehicle to the driver's side and observed PO [REDACTED] and PO Napoli holding onto Mr. [REDACTED] wrists as they pulled him out of the vehicle to the ground. Sgt. [REDACTED] did not participate in pulling Mr. [REDACTED] out of the car. Once Mr. [REDACTED] was handcuffed, Sgt. [REDACTED] entered the driver's seat of Mr. [REDACTED] vehicle and searched the driver's seat area for a possible firearm. Sgt. [REDACTED] could not

recall if he searched anywhere else in the vehicle. Sgt. [REDACTED] did not find any weapons in Mr. [REDACTED] car. Sgt. [REDACTED] decided that Mr. [REDACTED] would be removed to the stationhouse because Mr. [REDACTED] was upset and because a crowd was forming. An officer drove Mr. [REDACTED] car to the stationhouse and parked it in the garage.

Sgt. [REDACTED] was also interviewed for this incident (Board Review 24, IA # 241 for transcription). Sgt. [REDACTED] CCRB testimony was generally consistent with his IAB testimony, apart from why Mr. [REDACTED] was taken to the stationhouse. Sgt. [REDACTED] stated that it was his decision to take Mr. [REDACTED] to the stationhouse because he was concerned about the safety of his officers [REDACTED] a crowd started to form and Mr. [REDACTED] was still upset.

In his CCRB interview, PO [REDACTED] (Board Review 12) stated that he was on patrol with PO Solis when they were notified to go to the incident location to assist the other anti-crime unit. PO [REDACTED] did not remember how he and PO Solis were notified nor did he recall whether he was aware that there was a car stop at the location before arriving. Upon arrival, PO [REDACTED] observed that Mr. [REDACTED] door was open and Mr. [REDACTED] was sitting in the driver's seat. PO [REDACTED] and PO Napoli were holding on to Mr. [REDACTED] arms and telling him to get out of the vehicle. PO [REDACTED] ran to assist them. Mr. [REDACTED] head appeared wedged against the ceiling of his vehicle. Mr. [REDACTED] repeatedly said that he could not get out of the vehicle. PO [REDACTED] pulled lightly on Mr. [REDACTED] upper arm to get him out of the vehicle. Mr. [REDACTED] landed face first on the ground. PO [REDACTED] helped the other officers put Mr. [REDACTED] into two sets of handcuffs because Mr. [REDACTED] said that his arm could not bend. After Mr. [REDACTED] was handcuffed, PO [REDACTED] recognized Mr. [REDACTED] from the officer safety flyer. Sgt. [REDACTED] gave PO [REDACTED] the keys to Mr. [REDACTED] car and told him to open the trunk. PO [REDACTED] did not open the trunk for any other reason. Sgt. [REDACTED] and PO [REDACTED] searched the trunk of the vehicle, then closed the trunk. PO [REDACTED] did not find anything in the trunk. PO [REDACTED] did not search the vehicle any further. PO [REDACTED] did not witness any other officer search the vehicle. PO [REDACTED] eventually transported Mr. [REDACTED] and PO [REDACTED] back to the 101st Precinct stationhouse, where Mr. [REDACTED] was lodged in the holding cells. PO [REDACTED] did not remember what happened to Mr. [REDACTED] vehicle. PO [REDACTED] did not search Mr. [REDACTED] vehicle at the stationhouse. PO [REDACTED] CCRB testimony was consistent with his IAB testimony regarding his response to the location and the actions he took while on scene (Board Review 24, IA # 241 for transcription).

In his CCRB interview, PO Solis (Board Review 13) testified that a member of the other 101st Precinct anti-crime unit on duty at the time used their radio and transmitted that they had stopped a car. PO Solis did not remember if they provided any other information over the radio. PO Solis and PO [REDACTED] drove to the location. Upon arrival, PO Solis observed Sgt. [REDACTED] and PO [REDACTED] ordering Mr. [REDACTED] who was in the vehicle, to get out. Mr. [REDACTED] was not complying with their orders. PO Solis ran to the passenger's side of Mr. [REDACTED] vehicle to assist the other officers by pushing Mr. [REDACTED] out. PO Solis then ran to the open driver's side door, but there was no room because of the other officers. PO Solis ran back to the open passenger's side door intending to push Mr. [REDACTED] out of the vehicle, but by the time that he got to the passenger's side a second time, Mr. [REDACTED] was already out of the vehicle laying face-down on the ground. PO Solis was not able to see what these officers were doing before bringing him out of the vehicle, or how Mr. [REDACTED] got out of the vehicle, because his vision was obstructed by Mr. [REDACTED] vehicle as he was switching sides. PO Solis did not witness any officers making physical contact with or [REDACTED] physical force against Mr. [REDACTED] PO Solis believed that Mr. [REDACTED] vehicle may have a firearm inside of it based on what he learned from the officer safety flyer. PO Solis searched inside any area of Mr. [REDACTED] vehicle where Mr. [REDACTED] could have lunged and grabbed something from. PO Solis searched underneath the front floor mat, beneath the front driver and passenger seats, the center console, and the glovebox. PO Solis then searched the back passenger area behind the front

passenger seat. PO Solis looked through a brown paper bag that had jackets inside. PO Solis lifted each jacket in the bag to make sure that nothing was placed inside of the bag before or during the car stop. PO Solis also searched any crevice in these areas in which a gun could fit. PO Solis observed Sgt. [REDACTED] search the front passenger's side of Mr. [REDACTED] vehicle. Sgt. [REDACTED] also may have searched the trunk, but PO Solis was not certain. PO Solis drove Mr. [REDACTED] vehicle back to the stationhouse and parked it in front of the building. PO Solis gave the keys to either Sgt. [REDACTED] or PO [REDACTED]. PO Solis was not sure whether anyone searched the vehicle at the stationhouse. PO Solis' CCRB testimony was consistent with his IAB testimony regarding the initial observations he made when arriving at the location, the actions he took on scene, and his reason for taking those actions (Board Review 24, IA # 241 for transcription).

The investigation determined that the BWC footage from all the responding officers captured the incident in its entirety as well as the actions they took, respectively (Board Review 04).

PO [REDACTED] BWC footage, which is approximately 21 minutes and 32 seconds in length, captures his interaction with Mr. [REDACTED] (Board Review 04). At 1:10, PO [REDACTED] approaches Mr. [REDACTED] window and asks for his driver license and registration. Mr. [REDACTED] says, "Yes, can I ask why I was stopped?" PO [REDACTED] tells Mr. [REDACTED] that he did not signal from a parking spot. Mr. [REDACTED] reaches toward his door and grabs his wallet, saying, "Signal from a parking spot?" PO [REDACTED] asks Mr. [REDACTED] whether he has a driver's license, saying that this is the third time he has asked for it. Mr. [REDACTED] says that he is reaching for his license. At 1:41, Mr. [REDACTED] hands his license to PO [REDACTED] who asks for the vehicle's registration. At 1:48, Mr. [REDACTED] asks Sgt. [REDACTED] (who is standing by the front passenger's side window), "What, you can't see? I don't have no tints on it," while reaching into his glove compartment for documentation. At 2:00, Mr. [REDACTED] gives PO [REDACTED] his registration. PO [REDACTED] tells Mr. [REDACTED] to exit the vehicle. Mr. [REDACTED] says, "Step out of the car? I thought you pulled me over for a..." PO [REDACTED] repeats the order and says that he will "Take [Mr. [REDACTED] out." Mr. [REDACTED] says, "We don't have to do..." Mr. [REDACTED] door opens, though it is unclear who opens it. PO [REDACTED] leans into the open door and grabs a hold of Mr. [REDACTED] right arm. PO Napoli holds Mr. [REDACTED] left arm. Mr. [REDACTED] says that he is trying to get out of the vehicle and that he has a "bad arm" because he had been shot before. He tells the officers to let him get out on his own. PO [REDACTED] arms are visible reaching for Mr. [REDACTED] left shoulder. At 2:15, Mr. [REDACTED] leans forward and reaches beneath the driver's seat. PO [REDACTED] holds onto both of Mr. [REDACTED] wrists and attempts to pull him out of the vehicle. Mr. [REDACTED] asks if he can pick his wallet up and PO [REDACTED] tells him to stop reaching. PO [REDACTED] and PO Napoli continue to pull Mr. [REDACTED] wrists and attempt to pull him out of the vehicle. Mr. [REDACTED] tells the officers that he is trying to get out but that he has a bad arm. At 2:27, Mr. [REDACTED] has his forehead against the interior door frame of the vehicle. Mr. [REDACTED] repeats that he is trying to get out of the car but that his head is stuck. At 2:32 an officer tells Mr. [REDACTED] to put his head down. Simultaneously, PO [REDACTED] PO Napoli, and PO [REDACTED] pull Mr. [REDACTED] from the vehicle. Mr. [REDACTED] lands on the ground face-first. At 2:44, Sgt. [REDACTED] enters the driver's side of the vehicle and looks beneath the driver's seat. At 2:37, PO [REDACTED] rolls Mr. [REDACTED] onto his stomach. PO [REDACTED] handcuffs Mr. [REDACTED]. At 3:14, PO [REDACTED] briefly pats down and searches Mr. [REDACTED] buttocks and left front pants pocket. At 3:30, Sgt. [REDACTED] and PO Solis lean into Mr. [REDACTED] driver's side doorway and rear right doorway, respectively. At 4:00, Sgt. [REDACTED] opens and enters the vehicle through the rear passenger's side door behind the driver's seat. At 4:30, Sgt. [REDACTED] walks around the rear of the vehicle, opens the front passenger door, and leans in. Simultaneously, PO Napoli leans into the vehicle and looks under the driver's seat. PO [REDACTED] stands with Mr. [REDACTED]. Mr. [REDACTED] yells at PO [REDACTED] in sum and substance telling PO [REDACTED] that he wronged him and did not need to pull him out of the car. At 4:58, PO Napoli hands Mr. [REDACTED] keys to Sgt. [REDACTED] who is standing at the rear of the vehicle with PO Solis. There is no discussion amongst the officers during this time. At 5:30, PO [REDACTED] and PO Napoli lift Mr. [REDACTED] off the

ground. Mr. [REDACTED] continues to speak angrily at the officers. At 6:03, Sgt. [REDACTED] searches the trunk of the vehicle. At 7:24, PO Napoli tells Mr. [REDACTED] that the officers are going to bring him back to the 101st Precinct stationhouse. The officers walk Mr. [REDACTED] to a police vehicle and have him sit in the back seat.

PO [REDACTED] BWC recording, which is approximately six minutes and 29 seconds in length, captures his physical interaction with Mr. [REDACTED] as well as his search of the vehicle (Board Review 04). At 0:59, PO [REDACTED] holds on to Mr. [REDACTED] left arm and pulls Mr. [REDACTED] out of the vehicle. Mr. [REDACTED] lands on his left hip and rolls on to his back. Officers roll him onto his stomach. PO [REDACTED] puts handcuffs on Mr. [REDACTED] left wrist. At 4:08, PO [REDACTED] leans into Mr. [REDACTED] open driver's door and opens the trunk, then returns to the rear of the vehicle and lifts the trunk door. At 4:29, PO [REDACTED] reaches his hands into the trunk and moves objects around.

PO Napoli's BWC, which is approximately nine minutes and 46 seconds in length, captures him searching the driver's side area of Mr. [REDACTED] vehicle. From 03:00 to 03:15, PO Napoli bends down and reaches into the driver seat floor area (Board Review 04). The footage does not capture where on the floor area he reaches. PO Napoli then picks up Mr. [REDACTED] wallet from the floor and puts it on the driver's seat. At 04:33, PO Napoli shines his flashlight beneath the driver's seat.

Sgt. [REDACTED] BWC footage, which is approximately seven minutes and 51 seconds in length, captures his search of the vehicle (Board Review 04). At 2:36, Sgt. [REDACTED] leans into the open driver's door. He extends his hand underneath the dashboard, but it is unclear what he is reaching for. At 3:22, Sgt. [REDACTED] leans into the open driver's side door, but the positioning of the camera is such that his actions are unclear. Sgt. [REDACTED] searches the center console and the side of the front passenger seat. At 3:56, Sgt. [REDACTED] walks to the rear passenger side door behind the driver seat, opens it, and searches the pocket behind the driver's seat. At 4:15, Sgt. [REDACTED] opens the front passenger door and searches the floor area and the glove compartment. Approximately five people walk across the street in front of Mr. [REDACTED] parked vehicle. At 4:35, Sgt. [REDACTED] asks an officer, "You got his keys? Pop the trunk." PO Napoli throws Mr. [REDACTED] keys to Sgt. [REDACTED]. Two civilians are captured standing on the sidewalk opposite the officers. Sgt. [REDACTED] hands the keys to PO [REDACTED] and asks him if he can open the trunk. At 5:35, Sgt. [REDACTED] leans into the rear passenger's side door. The sound of a plastic bag moving is audible, although the camera is not pointed into the vehicle. Sgt. [REDACTED] asks PO Solis, who is leaning into the front passenger seat, "Did you go through this thing here?" At 5:42, Sgt. [REDACTED] returns to the rear of the vehicle where the trunk is open. Sgt. [REDACTED] removes a milk crate full of water bottles, shoes, and cleaning supplies from the vehicle, searches a jacket, and then returns the objects to the trunk with PO [REDACTED]. PO [REDACTED] looks through items in the trunk as well.

PO Solis' BWC, which is approximately 13 minutes 15 seconds in length, captures his search of Mr. [REDACTED] vehicle (Board Review 04). At 2:05, PO Solis opens the rear passenger's side door of Mr. [REDACTED] vehicle and moves objects around inside of the passenger cabin. He also searches a paper bag that is on the floor and the passenger's side seatback pocket. At 2:59, PO Solis exits the car as Sgt. [REDACTED] leans into the open driver's side door. PO Solis walks around the vehicle and at 3:52, he opens the front passenger door, lifts the floor mat from the ground, and puts it down. PO Solis sifts through papers in the door compartment. At 4:26, PO Solis closes the door and walks to the rear of the vehicle where Sgt. [REDACTED] and PO [REDACTED] are searching the trunk.

The investigation received the Automatic Vehicle Locator (AVL) document, which showed the location of PO [REDACTED] vehicle, RMP #971, before the incident (Board Review 25). The search revealed that PO [REDACTED] vehicle was in the vicinity of Mr. [REDACTED] residence, 262 and 265 Beach 15th Street in Queens between 12:32 p.m. and 1:02 p.m.

After reviewing the AVL log during his CCRB interview, PO [REDACTED] stated that he did not know why the vehicle was in the area for that period. He stated that an officer could have been going to the bathroom, it could have been parked, or any other reason (Board Review 09). During his IAB interview, PO [REDACTED] testified that he, PO Napoli, and Sgt. [REDACTED] were stationed outside of Mr. [REDACTED] residence waiting to see if Mr. [REDACTED] would go into his vehicle. PO [REDACTED] PO Napoli, and Sgt. [REDACTED] had been watching Mr. [REDACTED] vehicle, which was unoccupied at the time (Board Review 24, IA # 241 for transcription).

No TRI reports were generated as a result of this incident (Board Review 14).

IAB Group 54 investigated the same allegations and came to their own dispositions. IAB exonerated PO [REDACTED] search of Mr. [REDACTED]. The allegations of physical force against PO [REDACTED] PO Napoli, and PO [REDACTED] were exonerated. PO Napoli's search of the vehicle was exonerated. PO [REDACTED] PO Solis, and Sgt. [REDACTED] search of the vehicle were substantiated. PO [REDACTED] PO [REDACTED] and Sgt. [REDACTED] failure to prepare TRIs for the incident were substantiated (Board Review 07). IAB investigated Mr. [REDACTED] claim that he was racially profiled as well as the traffic summonses he was issued.

NYPD Patrol Guide Procedure 221-01 states that "force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances" (Board Review 15). The following factors, among others, are to be considered when determining whether the use of force is proper; the nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; the immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; whether the subject is actively resisting custody; the number of subjects in comparison to the number of officers; the size, age, and condition of the subject in comparison to officers; the subject's violent history (if known); and the presence of a hostile crowd or agitators (Board Review 16).

In People v. Mitchell, 185 A.D.2d 163, the court noted that while the police are permitted to rely on the direction of their fellow officers to arrest without simultaneously knowing the underlying facts which led to such direction, they cannot be considered to have relied on information possessed by each other without there having been any communication of either the information itself or a direction to arrest (Board Review 28).

In People v. Hardee 126 A.D.3d 626, the court established that the facts available to the officer, including the defendant's furtive behavior, suspicious actions in looking into the back seat on multiple occasions and refusal to follow the officers' legitimate directions, went beyond nervousness. Rather, the defendant's actions both inside and outside the vehicle created a "perceptible risk" and supported a reasonable conclusion that a weapon that posed an actual and specific danger to the officers' safety was secreted in the area behind the front passenger seat, which justified the limited search of that area, even after the defendant had been removed from the vehicle (Board Review 17).

In People v. Torres, 74 N.Y.2d 224, the court established that a police officer acting on reasonable suspicion that criminal activity is afoot and on an articulable basis to fear for his own safety may intrude upon the person or personal effects of the suspect only to the extent that is actually necessary to protect himself from harm (Board Review 26).

In People v. Mundo, 99 N.Y. 2d 55 the court held that absent probable cause, it is unlawful for a police officer to invade the interior of a stopped vehicle once the suspects have been removed and patted down without incident, as any immediate threat to the officers; safety has consequently been eliminated (Board Review 18).

NYPD Patrol Guide Procedure 218-13 states that whenever any property comes into the custody of this Department an inventory search will be conducted as follows ; if the contents to be inventoried are in an automobile 1) Search the interior of the vehicle thoroughly. This search should include any area that may contain valuables including but not limited to; the glove compartment, console, map pockets in or on doors and rear of side seats, areas under the seats and in and around the seat stuffing springs, under the floor mats, under and behind the dashboard, inside the ashtrays, in the air vent where accessible under the hood, and the trunk. 2) Force open trunk, glove compartment, etc. only if it can be done with minimal damage and 3) Remove all valuables from the vehicle and invoice on a separate property clerk invoice (Board Review 27).

Although Mr. [REDACTED] did not allege being frisked, BWC footage revealed that he was frisked and searched by PO [REDACTED]. Based on the BWC footage, the investigation also determined that PO [REDACTED], PO Napoli, and PO [REDACTED] were the subjects of the force allegations and that PO [REDACTED] searched Mr. [REDACTED]. Mr. [REDACTED] could not attribute which officers took these specific actions against him. Although PO [REDACTED] subsequently searched the trunk of Mr. [REDACTED] vehicle, a vehicle search allegation was not pled against PO [REDACTED]. Sgt. [REDACTED] had instructed him to do so.

The BWC footage shows Mr. [REDACTED] providing PO [REDACTED] with all his documentation upon PO [REDACTED] request. The BWC also shows PO [REDACTED] ordering Mr. [REDACTED] to get out of the vehicle three consecutive times without giving Mr. [REDACTED] the time to do so, which inherently escalated the situation. Mr. [REDACTED] [REDACTED] to the officers that he was trying to step out of the vehicle but that it would take him a moment because he had an injured arm. The BWC also showed Mr. [REDACTED] asking the officers if he could pick up his wallet while simultaneously reaching for it. PO [REDACTED] and PO Napoli testified that they could not see where or what Mr. [REDACTED] was reaching for, which concerned them based on what was noted in the officer safety flyer, and immediately proceeded to remove him from the vehicle. However, given PO [REDACTED] and PO Napoli did not allow Mr. [REDACTED] a reasonable amount of time to comply with their orders despite Mr. [REDACTED] verbal compliance, the investigation determined that the way in which PO [REDACTED] and PO Napoli removed Mr. [REDACTED] (namely pulled all the way to the ground) was excessive under the circumstance. Furthermore, the investigation determined that some force to remove Mr. [REDACTED] would have been appropriate but not to the extent that PO [REDACTED] and PO Napoli employed given that Mr. [REDACTED] was not actively resisting their orders, the short duration of their preceding interaction with Mr. [REDACTED] the absence of a hostile crowd or agitators, and Mr. [REDACTED] physical condition in comparison to theirs. In light of the above information, the investigation determined by a preponderance of the evidence that PO [REDACTED] and PO Napoli's use of force constitutes misconduct. it is therefore recommended that **Allegations A and B** be closed as **Substantiated**.

PO [REDACTED] testified that upon his arrival he observed PO [REDACTED] and PO Napoli physically engaged with Mr. [REDACTED] and therefore assisted them in taking Mr. [REDACTED] out of the car. Per the court's decision in People v. Mitchell, PO [REDACTED] did not need to know the underlying facts that precipitated the situation to assist PO [REDACTED] and PO Napoli in pulling Mr. [REDACTED] out of the car. Therefore, the investigation determined that his use of force against Mr. [REDACTED] did not constitute misconduct. It is therefore recommended that **Allegation C** be closed as **Exonerated**.

BWC footage shows PO [REDACTED] frisking and searching Mr. [REDACTED] on the ground after he was

handcuffed. PO [REDACTED] stated that he searched Mr. [REDACTED] to ensure that he did not have any weapons on his person. In light of PO [REDACTED] prior knowledge of the flyer regarding Mr. [REDACTED] and that Mr. [REDACTED] had just reached beneath his seat, the investigation determined that PO [REDACTED] frisk and search of Mr. [REDACTED] was reasonable to protect himself and others from harm. It is therefore recommended that **Allegations D and E** be closed as **Exonerated**.

BWC footage captures PO Napoli and Sgt. [REDACTED] searching the driver's seat after Mr. [REDACTED] was removed from the vehicle. PO Napoli and Sgt. [REDACTED] both testified that they observed Mr. [REDACTED] reach towards the driver seat floorboard and that they subsequently searched that area for weapons. The safety flyer regarding Mr. [REDACTED] and his reach beneath his seat, supported a reasonable conclusion that a weapon that posed an actual and specific danger to the officer's safety was present in that area. The officers only searched the immediate area surrounding the driver's seat, which does not constitute an excessive search under the circumstances. Given the facts available to PO Napoli and Sgt. [REDACTED] at that time, the investigation determined that their limited search of the driver's side seat and floor area was justified and in line with the case law cited above. It is therefore recommended that **Allegations F and G** be closed as **Exonerated**.

BWC footage shows Sgt. [REDACTED] and PO Solis searching Mr. [REDACTED] vehicle after Mr. [REDACTED] had been removed from it. In addition to his search of the driver's seat area, Sgt. [REDACTED] also searched the front passenger seat area, both back passenger seat areas, and the trunk. PO Solis searched the front and back passenger seats. Sgt. [REDACTED] could not recall which portion of the vehicle he searched but stated that that he did so to look for weapons, and PO Solis stated that he searched the vehicle for potential weapons as well. Based on the case law, the investigation determined that a limited search of the driver seat area was appropriate given Mr. [REDACTED] reach beneath the seat. Although Mr. [REDACTED] vehicle was removed to the stationhouse, the officers testified that the vehicle was only searched on scene for a firearm and thus, an inventory search was not conducted. However, based in the case law, Sgt. [REDACTED] and PO Solis did not have a protective basis to search the entire vehicle [REDACTED] the threat to their safety was eliminated when Mr. [REDACTED] was removed from the vehicle and frisked and searched for weapons, making their search of the rest vehicle misconduct. As such, the investigation determined by a preponderance of the evidence that Sgt. [REDACTED] and PO Solis committed misconduct by searching the rest of Mr. [REDACTED] vehicle. It is therefore recommended that **Allegations H and I** be closed as **Substantiated**.

Allegation (J) Other Possible Misconduct Noted: Police Officer [REDACTED] failed to prepare a Threat, Resistance, and Injury Report.

Allegation (K) Other Possible Misconduct Noted: Police Officer [REDACTED] failed to prepare a Threat, Resistance, and Injury Report.

Allegation (L) Other Possible Misconduct Noted: Police Officer Roberto Napoli failed to prepare a Threat, Resistance, and Injury Report.

Allegation (M) Other Possible Misconduct Noted: Sergeant [REDACTED] failed to prepare a Threat, Resistance, and Injury Report.

PO [REDACTED] PO Napoli, and PO [REDACTED] testified that they pulled Mr. [REDACTED] from the vehicle (Board Reviews 09, 10, 12). During their IAB interviews, PO [REDACTED] PO Napoli, and PO [REDACTED] acknowledged, respectively, that they did not prepare a TRI Report (Board Review 19). During his IAB interview, Sgt. [REDACTED] stated that removing Mr. [REDACTED] from the vehicle was a forcible takedown and thus, a TRI report should have been prepared as a result.

NYPD Patrol Guide Procedure 221-03 states that a TRI report must be prepared for any instance in which a member of service uses force against a subject (Board Review 20).

Given that PO [REDACTED] PO Napoli, and PO [REDACTED] used force to remove Mr. [REDACTED] from the vehicle, they were required to prepare TRI reports for this incident. Although Sgt. [REDACTED] did not use force against Mr. [REDACTED] he was the highest-ranking officer on scene and thus the responsibility to ensure the reports were generated would have fallen to him. It is therefore recommended that **Allegations J-M** result in **Other Possible Misconduct Noted**.

Civilian and Officer CCRB Histories

- Mr. [REDACTED] has been party to three other CCRB complaints and has been named as a victim in one other allegation (Board Review 21).
 - 200718177 contained an allegation of physical force which was unsubstantiated.
- Sgt. [REDACTED] has been a member of service for eight years and has been a subject in one other CCRB complaint and one other allegation, which was not substantiated. Sgt. [REDACTED] CCRB history does not reflect any apparent pattern pertinent to this investigation.
- PO [REDACTED] has been a member of service for eight years and has been a subject in eight other CCRB complaints and 19 other allegations, six of which were substantiated.
 - 201505360 contained substantiated allegations of interference with a recording device, retaliatory summons, threat of arrest, and discourtesy against PO [REDACTED]. The Board recommended charges and PO [REDACTED] forfeited two vacation days after the NYPD found him guilty only of issuing a retaliatory summons. PO [REDACTED] was also cited with other misconduct for failure to prepare a memo book entry and making a false official statement.
 - 201800301 contained two substantiated allegations of chokeholds against PO [REDACTED]. The Board recommended charges and the PO [REDACTED] forfeited 30 vacation days after the NYPD found him guilty.
 - PO [REDACTED] CCRB history does not reflect any apparent pattern pertinent to this investigation.
- PO Napoli has been a member of service for seven years and has been a subject in six other CCRB complaints and 19 other allegations, none of which were substantiated. PO Napoli's CCRB history does not reflect any apparent pattern pertinent to this investigation.
- PO [REDACTED] has been a member of service for seven years and has been a subject in one other case and three other allegations, none of which were substantiated. PO [REDACTED] CCRB history does not reflect any apparent pattern pertinent to this investigation.
- PO Solis has been a member of service for 14 years and has been a subject in nine other cases and 11 other allegations, one of which was substantiated.
 - 201710526 contained a substantiated allegation of refusal to provide shield number against PO Solis. The Board recommended command discipline B and the NYPD imposed instructions.

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- Mr. [REDACTED] filed a Notice of Claim with the City of New York claiming assault, battery, false arrest, false imprisonment, malicious prosecution, intentional infliction of emotional distress, negligent infliction of emotional distress, outrageous conduct giving rise to personal injuries, prima facie tort, and violation of civil rights and seeking \$5,000,000, plus attorney's fees in redress (Board Review 22). A 50H hearing was held on June 25, 2020 (Board Review 23).
- According to the Office of Court Administration (OCA), between February 21, 2013 and November 29, 2021, Mr. [REDACTED] was convicted of operating a motor vehicle while under the influence of alcohol or drugs (once) and fined \$300, referred to a drinking driver

program, and had his license suspended for 90 days (Board Review 23). OCA does not list any other felony or misdemeanor convictions.

Squad: 3

	Charis Jones	Inv. Charis Jones	12/27/2021
Investigator:	<hr/>	<hr/>	<hr/>
	Signature	Print Title & Name	Date

	<u>Olga Golub</u>	<u>IM Olga Golub</u>	<u>12/27/2021</u>
Squad Leader:	<hr/>	<hr/>	<hr/>
	Signature	Print Title & Name	Date

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Reviewer:	Signature	Print Title & Name	